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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 09-90048

ORDER

KOZINSKI, Chief Judge:

Complainant alleges that the district judge assigned to his criminal case made various improper substantive and procedural rulings. These charges relate directly to the merits of the judge's rulings and must therefore be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B). A misconduct complaint is not the proper vehicle for challenging a judge's rulings. See In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

Complainant also alleges that the judge showed bias and hostility towards him, such as by cutting him off when he spoke. A review of the hearing transcripts reveals that the judge may have displayed some frustration with complainant's disruptive behavior, but did not demonstrate bias or act improperly. Cf. Liteky v. United States, 510 U.S. 540, 555–56 (1994). Complainant says that the judge improperly required him to attend a hearing wearing a spit mask and strapped to a wheelchair, and that he was given no bathroom breaks so he soiled himself. The

wheelchair and spit mask were clearly justified by complainant's behavior, and he provides no evidence that the judge denied him a bathroom break.

Complainant further claims that the judge scheduled twenty-six status conferences just to wear him down. The number of status conferences shows that the judge carefully supervised complainant's case to ensure that he was getting adequate representation. Complainant also suggests that the judge conspired with the prosecutor and his defense attorney, and that the transcripts of one of his hearings were doctored. But complainant hasn't provided any objectively verifiable proof (for example, names of witnesses, recorded documents or transcripts) to support these allegations. See In re Complaint of Judicial Misconduct, 583 F.3d 598, 598 (9th Cir. Jud. Council 2009).

Complainant additionally alleges that the judge improperly allowed a racist attorney to represent him, and that the judge should at least have conducted an evidentiary hearing on whether defense counsel was prejudiced. A review of the transcript reveals that the judge listened to complainant's concerns and discredited his allegations. Complainant had a history of finding problems with his attorneys and making outlandish statements. The judge's decision not to investigate complainant's claims any further was proper. Because there is no evidence of misconduct, these charges must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii);

Judicial-Conduct Rule 11(c)(1)(D).

Complainant further alleges the judge unduly delayed ruling on one of his motions and has not ruled on another. Delay and failure to rule are not misconduct unless they are habitual or improperly motivated. See Judicial-Conduct Rule 3(h)(3)(B); In re Complaint of Judicial Misconduct, 567 F.3d 429, 431 (9th Cir. Jud. Council 2009). Complainant provides no evidence of improper motive or habitual delay here.

Complainant's allegations against a prosecutor, probation officer, court reporter and his attorneys are dismissed because this misconduct complaint procedure applies only to federal judges. See Judicial-Conduct Rule 4.

Complainant's request for legal representation is not cognizable under the misconduct complaint procedure. See Judicial-Conduct Rule 3(h).

DISMISSED.